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DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

Titles and texts of draft articles on the Draft Code of Crimes against the Peace and Security of Mankind adopted by the Drafting Committee on second reading at its 47th session

Draft Code of Crimes against the Peace and Security of Mankind

[PART I
Chapter 1. ...]

Article 1 1/

Scope and application of the present Code

1. The present Code applies to the crimes against the peace and security of mankind set forth in Part II.

2. Crimes against the peace and security of mankind are crimes under international law and punishable as such, whether or not they are punishable under national law.

1/ The Drafting Committee agreed that the question of characteristics of the crimes under the Code should be examined at a later stage.

[Chapter 2. ...]

[Article 2]

[Redrafted and appears as paragraph 2 to article 1]

... 2/

[Article 4]

[Deleted]

Article 5

Responsibility of States

The fact that the present Code provides for the responsibility of individuals for crimes against the peace and security of mankind is without prejudice to any question of the responsibility of States under international law.

Article 5 bis

Establishment of jurisdiction

Each State party shall take such measures as may be necessary to establish its jurisdiction over crimes against the peace and security of mankind.

Article 6 3/

Obligation to extradite or prosecute

The State in the territory of which an individual alleged to have committed a crime against the peace and security of mankind is found shall either extradite that individual or refer the case to its competent authorities for the purpose of prosecution.

Article 6 bis

Extradition of alleged offenders

1. To the extent that the crimes set out in articles ... are not extraditable offences in any extradition treaty existing between States parties, they shall be deemed to be included as such therein. States parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.

2/ The Drafting Committee agreed to revert to art. 3 at a later stage.

3/ The question of jurisdiction will be reviewed, once the substantive articles on crimes are finalized, with a view to examining the possibility of exclusive international jurisdiction in the case of specific crimes including aggression.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider the present Code as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided in the law of the requested State.

3. State parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the conditions provided in the law of the requested State.

4. Each of those crimes shall be treated, for the purpose of extradition between States parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States parties which have established their jurisdiction in accordance with article 5 bis.

... 4/

Article 8

Judicial guarantees

1. An individual charged with a crime against the peace and security of mankind shall be presumed innocent until proved guilty and shall be entitled without discrimination to the minimum guarantees due to all human beings with regard to the law and the facts and shall have the rights:

(a) in the determination of any charge against him, to have a fair and public hearing by a competent, independent and impartial tribunal duly established by law or by treaty;

(b) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(c) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(d) to be tried without undue delay;

(e) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him and without payment by him if he does not have sufficient means to pay for it;

4/ The Drafting Committee then agreed to revert to art. 7 at a later stage.

(f) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(g) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(h) not to be compelled to testify against himself or to confess guilt.

2. An individual convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

Article 9

Non bis in idem

1. No one shall be tried for a crime against the peace and security of mankind for which he has already been finally convicted or acquitted by an international criminal court.

2. Subject to paragraphs 3, 4 and 5, no one shall be tried for a crime against the peace and security of mankind in respect of an act for which he has already been finally convicted or acquitted by a national court.

3. Notwithstanding the provisions of paragraph 2, an individual may be tried by an international criminal court for a crime against the peace and security of mankind if:

(a) the act which was the subject of a trial and judgement as an ordinary crime corresponds to one of the crimes characterized in the present Code; or

(b) the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

4. Notwithstanding the provisions of paragraph 2, an individual may be tried by a national court of another State for a crime against the peace and security of mankind if:

(a) the act which was the subject of the previous judgement took place in the territory of that State; or

(b) that State has been the main victim of the crime.

5. In the case of a subsequent conviction under the present Code, the court, in passing sentence, shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 10

Non-retroactivity

1. No one shall be convicted under the present Code for acts committed before its entry into force.

2. Nothing in this article shall preclude the trial and punishment of anyone for any act which, at the time when it was committed, was criminal in accordance with international law or national law.

Article 11

Order of a Government or a superior

The fact that an individual charged with a crime against the peace and security of mankind acted pursuant to an order of a Government or a superior does not relieve him of criminal responsibility, [but may be considered in mitigation of punishment if justice so requires]. 5/.

Article 12

Responsibility of the superior

The fact that a crime against the peace and security of mankind was committed by a subordinate does not relieve his superiors of criminal responsibility, if they knew or had reason to know, in the circumstances at the time, that the subordinate was committing or was going to commit such a crime and if they did not take all necessary measures within their power to prevent or repress the crime.

Article 13

Official position and responsibility

The official position of an individual who commits a crime against the peace and security of mankind, and particularly the fact that he acts as head of State or Government, does not relieve him of criminal responsibility.

... 6/

5/ The issue addressed in the bracketed phrase will be examined in the context of an article to be drafted on mitigating or aggravating circumstances.

6/ The Drafting Committee agreed to revert to article 14 at a later stage.

[PART II

.....]

Article 15 7/

Aggression

[1. An individual who, as leader or organizer, commits an act of aggression shall be punished under the present Code.]

2. Aggression is the use of armed force by a State against the territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.

Article 19

Genocide

[1. An individual who commits an act of genocide shall be punished under the present Code.] 8/

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

(a) killing members of the group;

(b) causing serious bodily or mental harm to members of the group;

(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) imposing measures intended to prevent births within the group;

(e) forcibly transferring children of the group to another group.

3. The following acts shall also be punishable:

(a) conspiracy to commit genocide;

(b) direct and public incitement to commit genocide;

(c) attempt to commit genocide;

(d) complicity in genocide. 9/

7/ The Drafting Committee will reexamine paragraph 1 of each of the articles of Part II with a view to determining the possibility of adopting uniform language and in the light of the decision it will reach in relation to article 3.

8/ Ibid.

9/ The Drafting Committee will reexamine paragraph 3 of the article in the light of the decision it will reach in relation to article 3.